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REVIEW OF THE
RESERVATION
SYSTEM IN INDIA –
A STEP TOWARDS
CONVERGING
WITH THE CONCEPT
OF EQUALITY

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Review of Reservation System in India – A Step Towards Converging With The Concept of Equality

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ABSTRACT:

The concept of equality enshrined in the Indian Constitution literally means that each and every person is subjected to the ordinary law of the land and no person is above the law i.e., equals should be treated equally and the like should be treated alike. It does not mean that all laws must be general in character. It does not mean that the same laws should apply to all persons and that every law must have universal application for, all persons are not, by nature, attainment or circumstances in the same position. The varying need of different classes of persons often require a separate treatment. Thus, a reasonable classification is permitted for the development of the society. This is what the Indian Constitution provides under Article 14. But where equals and unequal are treated differently, the application of Article 14 fails and there comes the concept of class legislation resulting in improper discrimination. This is the basis for the concept of reservation that emerged as a means for adequately representing people or communities that faced historical injustice due to their caste identity in government jobs, educational institutions and even legislatures. Also referred by the term 'quota based affirmative action', reservation can be seen as positive discrimination, a policy to vindicate the concept of equality. Rather the concept of reservation is operating as a tool for caste-based discrimination, jeopardizing the quality of education and industry. It merely serves as a threat to social justice thereby defeating the purpose sought to be achieved by Article 14. This paper attempts to review the existing reservation system in the light of growing inequalities based on the caste system and to analyze whether the proposed objectives of the legislation on this subject has been achieved.

Keywords: Equality, Reservation, Quota based affirmative action, Caste-based discrimination, Social justice.

INTRODUCTION:

The concept of equality enshrined in the Indian Constitution literally means that each and every person is subjected to the ordinary law of the land and no person is above the law i.e., equals should be treated equally and the like should be treated alike. It does not mean that all laws must be general in character. It does not mean that the same laws should apply to all persons and that every law must have universal application for, all persons are not, by nature, attainment or circumstances in the same position. The varying needs of different classes of persons often require a separate treatment. Thus, a reasonable classification is permitted for the development of the society. This is what the Indian Constitution provides under Article 14. But where equals and unequal are treated differently, the application of Article 14 fails and there comes the concept of class legislation resulting in improper discrimination. This is the basis for the concept of reservation that emerged as a means for adequately representing people or communities that faced historical injustice due to their caste identity in government jobs, educational institutions and even legislatures. Also referred by the term 'quota based affirmative action', reservation can be seen as positive discrimination, a policy to vindicate the concept of equality. Rather the concept of reservation is operating as a tool for caste-based discrimination, jeopardizing the quality of education and industry. It merely serves as a threat to social justice thereby defeating the purpose sought to be achieved by Article 14. This paper attempts to review the existing reservation system in the light of growing inequalities based on the caste system and to analyse whether the proposed objectives of the legislation on this subject has been achieved.

HISTORICAL AND LEGAL BACKGROUND:

The reservation policy¹ is an age old policy being practiced in India. Its origin has its roots scattered from the ancient times when the practice of 'untouchability', caste system and Varna system was dominant in the society. In ancient times, the Hindu society was divided on the basis of Varna, Jatis or classes and they were as follows in the descending order of their social hierarchy- the Brahmans, the Kshatriyas, the Vaisyas and the Shudras. There was

¹ Reservation System in India ensures that individuals born in the castes categorised as Scheduled Castes and Scheduled Tribes (SCs and STs) and Other Backwards Classes (OBCs) are given priority over General Category candidates in recruitment to government jobs, admission in higher educational institutions, and selection of Legislative and parliament members.

another class of people or rather no class people known as “untouchables” or “avarna” that is who has no class. These untouchables were considered to be impure for society and were excluded from the social system. They had to reside outside the village and had no social rights. In some parts of the country such as Southern India, if even their shadow was casted on the upper-class people then it was considered that the person has got impure. There were strict restrictions on them for social gatherings and social life and if they violated any social norm, they were severely punished and in some cases were even killed. The epics like Mahabharata also quote many instances wherein a warrior like Karna was not allowed to showcase his talent merely on the ground of him being a Shudra. He was often referred to as ‘Shudra Putra’ and humiliated because of his caste. The then prevalent caste system was a major reason for the advent and advancement of the Reservation Policy in India. The idea of giving reservations to a certain class of people originated because of the prevalent atrocities being done on the certain class of people. To give them an equal opportunity, an equal status in society, to uplift them socially, to bring them at par with other sections of society and moreover to bring development in the lower strata of society, were the reasons for the adoption of Reservation Policy in India.

Reservation Policy in Pre-Independence Era:

The legal origin of Reservation Policy in India began with lying down of the Government of India Act, 1919 which came during the turbulent period of World War I. During this period, the British were more focussed on Europe rather than on India yet they passed much important and significant legislation that aimed at the development of the Indian Territory. This Act of 1919 not only introduced several reforms for the Indian Governmental institutions but also addressed many issues of minorities including the formation of communal electorates. Though the system was criticized firmly by Montague-Chelmsford as a system that could be an obstacle to the self-development policy but because Muslims already had a communal electorate through the Minto- Morley reform of 1909 and, therefore, they found it impossible to take away the separate electorates of Muslims. After the Act of 1919, the controversial Simon Commission came up in 1927 to scrutinize the Montague- Chelmsford reforms. After touring the entire Indian provinces, their representatives proposed for combining separate electorates and reserving seats for depressed classes and demand for the wider franchise was there as the economic, educational and social position of these depressed classes did not allow them to vote properly. To stamp and scrutinize the report of Simon Commission and the reforms proposed by them and how to incorporate them into the new

Constitution, a Round Table Conference was convened in London in 1931. There were many Indian delegates from various interests groups. The conference was chaired by Prime Minister Ramsay Macdonald. There were appeals for separate electorate from Dr. B.R Ambedkar but Mahatma Gandhi strongly opposed the appeal for separate electorate for depressed classes and because of this strong opposition from Mahatma Gandhi and Congress the issue of minority remained unresolved in the Conference. After this the Communal Award and the Poona Pact of 1932 came into force wherein the Prime Minister Macdonald announced the communal award where the separate representations were to be provided to Muslims, Sikhs, Indian Christians, Anglo- Indians, Europeans and Dalits Depressed classes' were assigned a number of seats that were to be filled by election from special constituencies in which voters belonging to the depressed classes could only vote. The award brought in criticism from Mahatma Gandhi but was strongly supported by Dr. BR Ambedkar and other minority groups. As a result of the hunger strike by Mahatma Gandhi and widespread revolt against the award, the Poona Pact of 1932 came into being which brought in a single general electorate for each of the seats of British India and new Central Legislatures. The stamping of the provisions of Poona Pact, 1932 were done in the Government of India Act of 1935 where reservation of seats for depressed classes was allotted. This was the scenario before the independence of India.

Reservation Policy in Post-Independence Era:

Post-Independence the scenario changed and the reservation policy gained even more momentum than the pre-independence era. The Constituent assembly chaired by Dr. B.R Ambedkar framed the reservation policy and many Articles in the Indian Constitution were dedicated for the same.

Article 15:

Article 15(4)² is an exception to clauses 1 and 2 of Article 15, and it was added as a result of the decision in *State of Madras v. Champakam Dorairajan*³. In this case, the Government had reserved seats in State Medical and Engineering colleges for different communities in various proportions on the basis of religion, caste and race. The State defended the law on the ground that it was enacted with a view to promote the social justice for all the

² Inserted by means of the Constitution (1st amendment) Act, 1951

³ AIR 1951 SC 226

sections of people as required by Article 46⁴ of the Directive Principles of State Policy. The Supreme Court held the law as void since it classified the students on the basis of caste and religion irrespective of merit. To modify the effect of the decisions, Article 15 was amended by the Constitution (1st Amendment) Act, 1951. Under this clause, the state is empowered to make provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. After the amendment, it became possible for the state to put up a Harijan Colony in order to advance the interest of the backward classes. The new clause 5⁵ provides that nothing in Article 15 or in sub- clause (g) of Clause 1 of Article 19 shall prevent the state from making any special provisions, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Clause (1) of Article 30.

The above-mentioned amendment has been enacted to nullify the effect of three decisions of the Supreme Court in *TM Pai Foundation v. State of Karnataka*⁶, *Islamic Academy v. State of Karnataka*⁷ and *P.A. Inamdar v. State of Maharashtra*⁸. In T.M Pai and P.A. Inamdar case, it had been held that the state cannot make reservations of seats in admissions in privately run educational institutions. In Islamic Academy case, it has been held that the state can fix quota for admissions to these educational institutions but it cannot fix fees, and also admission can be done on the basis of common admission tests and on the basis of merit. This Amendment enables the state to make provisions for reservation for the above categories of classes in admission to private educational institutions. The Amendment, however, keeps the minority educational institutions out of its purview. Article 15 prohibits discrimination on the ground of religion. The evil effect of reservation is well known. The politicians who claim to take the country to the 21st century for which higher education is based on merit is essential, is taking a retroactive step in providing reservation to less meritorious students to private educational institutions. This appeasement policy of the government may get them some

⁴ Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.

⁵ Inserted by means of the Constitution (93rd amendment) Act, 2006

⁶ AIR 2003 SC 355

⁷ AIR 2003 SC 3724

⁸ AIR 2005 SC 3226

benefit in elections, but it would be harmful to the Nation. In *M.R. Balaji and Ors. v. State of Mysore*⁹, the State of Mysore issued an order declaring all communities except the Brahmin community as socially and educationally backward under Article 15(4) of the Constitution and reserving a total of 75 per cent seats in Educational Institutions in favour of Socially and Economically Backward Castes and SCs/STs. Such orders were repetitive in nature. They were being issued every year, with little to no variation in the reservations being allotted. When this order was challenged in the Supreme Court under Article 32 of the Constitution, the 5-judge bench struck it down claiming that backwardness is a social and educational factor, both. Though caste in relation to Hindus may be a relevant factor to consider, in determining the social backwardness of a class of citizens, it cannot be made the sole and dominant test.

Article 16:

Article 16(3) is an exception to clause 2 of Article 16 which forbids discrimination on the ground of residence. However, there may be good reasons for reserving certain posts in the State for residents only. This article empowers Parliament to regulate by law the extent to which it would be permissible for a state to depart from the above principle. Article 16(4) is the second exception to the general rule embodied in Articles 16(1) and (2). It empowers the state to make special provision for the reservation in appointments of posts in favour of any backward class of citizens which in the opinion of the State are not adequately represented in the services under the State. But in *Indra Sawhney v. Union of India*¹⁰, also known as the Mandal Commission case, the 9 Judges Constitutional Bench of the Supreme Court held by 6:3 majority that the decision of the Union Government to reserve 27% Government jobs for backward classes provided socially advanced persons- Creamy Layer among them are eliminated, is constitutionally valid. The reservation of seats shall only confine to initial appointments and not to promotions, and the total reservations shall not exceed 50 per cent. After this landmark case, Article 16(4-A)¹¹ and 16(4-B)¹² were added. According to clause 4-A, “nothing in this Article shall prevent the state from making any provision for reservation in matters of promotion to any class or classes of posts in the service of state in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State, are not adequately represented in the services under the State.” Clause 4-B seeks to end the 50% ceiling on the

⁹ AIR 1963 SC 649

¹⁰ AIR 1993 SC 477

¹¹ Inserted by means of the Constitution (77th amendment) Act, 1995

¹² Inserted by means of the Constitution (81st amendment) Act, 2000

reservation for SCs/STs and BCs in backlog vacancies which could not be filled up in the previous years due to the non-availability of eligible candidates. According to the data released by the Planning Commission for the year 2004-2005, the aftermath of the Mandal Commission's case led to a considerable progress and more people among the deprived social classes were brought above the poverty line, when compared to other segments of the society. Therefore, it became an imperative for the legislature to frame policies for the upliftment of the economically weaker sections of the people who belonged to "other category" or "general category". Keeping this in mind the legislature passed the Constitution (103rd Amendment) Act, 2019 to provide for 10 per cent reservation in the jobs and educational institutions to the economically backward section in the general category. This resulted in inserting Articles 15(6)¹³ and 16(6)¹⁴ in the Constitution. This is the position as to the reservation policy in India, so far.

REVIEW OF THE RESERVATION SYSTEM:

The concept of Affirmative action¹⁵ which was founded to check racial discrimination of impoverished classes especially during job applications, so that the employees are not discriminated against due to their race, colour or nationality¹⁶. The quota based affirmative action behind the policy of reservation nowadays seems to be the system that promotes the caste-based discrimination rather than would remove the inequalities which is the purpose of the legislation. The system of reservation was meant to last for a decade or so, but it has become so established in the contemporary times, that the majority are naturally in derision of it. While reservation is an effective tool for social mobility, we cannot remain oblivious to the

¹³ Nothing in this article or sub-clause (g) of clause (1) of Article 19 or clause (2) of Article 29 shall prevent State from making: (a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) insofar as such special provisions relate to their admissions to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category. *Explanation*— For the purpose of this article and Article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantages.

¹⁴ Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten percent of the posts in each category.

¹⁵ Affirmative action refers to a set of policies and practices within a government or organization seeking to increase the representation of particular groups based on their gender, race, creed or nationality in areas in which they were excluded in the past such as education and employment.

¹⁶ Available at

<https://thelogicalindian.com/story-feed/awareness/affirmative-action-the-system-of-reservations-and-quotas-in-india/>, visited on 11-12-2020 at 14:52 pm.

fact that it has strengthened and institutionalised a caste-based identity. The “seed of discrimination” were sown a long time ago. Discrimination of a person or a community whether it is due to his/her race, colour or nationality not only hampers the mobility of the particular community but also leads to the degeneration of a nation. On the other hand, the reservation policy has resulted in the horizontal proliferation of benefits to only the better-off among eligible sections, thus perpetuating inequalities. The benefits behind this policy are meant to those who are backward in their capability to meet their needs. But the well-off sections of the same community tend to seize the reservations while the poor remain poor and unable to access the welfare schemes meant to rehabilitate them. The condition of poor Dalits, minorities, transgender and other marginalised sections is far from satisfactory. It is clear that reservation does not introduce the caste system. Caste system already exists in the form of a segregated society in which the top positions are reserved for those from upper castes.

The concept behind reservation is that it operates as positive discrimination thereby compromising with equality. But the Indian Constitution grants every individual the equal protection of laws¹⁷ and the right not to be discriminated against. Even if reservation policies serve the valuable purpose of integration and desegregation, as well as the objective of equalising opportunities for all, such policies are nevertheless objectionable if they violate this important right. The idea that reservation is an aberration from equality is no longer the view of the Supreme Court. In earlier decisions rendered by the Court, Article 16(4) was held to be an exception to Article 16(1). But in the State of *Kerala v. N.M. Thomas*¹⁸, the Supreme Court held that Article 16(4) is not an exception to equality but rather a facet of Article 16(1). Today Articles 16(1) and 16(4) are understood as a part of one and the same scheme directed towards promoting equality. The fight against inequality requires a holistic approach for which quota system is only a small part. The reservation system should therefore meet the intent of the legislation in a way that promotes equality among people in every aspect of society.

SUGGESTIONS AND CONCLUSION:

The reservation policy in India was adopted with a reason to uplift certain castes who were subjugated to atrocities, social and economic backwardness due to the prevalent dominance of caste system in Hindu Society. This reason has somewhere lost its essence in

¹⁷ Article 14, the Constitution of India

¹⁸ 1976 AIR 490

the modern era, and the castes that should be actually benefited are not being benefitted, and the others are reaping the benefits of the reservation system that is actually not meant for it. Today, the reservation system has just become a tool for politicians to gain vote banks. It is quite impossible to declare the reservation policy as good or bad as those benefiting from it would always support it and declare it to be advantageous while those who are at a loss because of the system would always curse it and declare it to be disadvantageous. But what matters the most is not whether the reservation policy is good or bad instead what matters is the idea and the reason behind its adoption. If that reason is losing its essence, then, of course, the reservation policy would gradually turn out to be bad. It is more important that the essence of the idea reservation policy should be maintained, and the actual backward classes who are in real denied access to education, job opportunities etc. must be benefitted. For reservation to be truly transformative, it must be accompanied by a strong commitment to overcome the segregation of the caste system. Only then the Indians will be able to live Ambedkar's vision of fraternity, or as he called it, democracy.

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